IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Akhtar Ali Sayyed
Vs.
High Court of Judicature
for Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.2565/2002
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 05th October, 2006

PRESENT

REPORTABLE

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Rakesh Arora, Advocate for the petitioner.
Mr.V.K. Mathur, Advocate for the respondents.
Mr.Sandeep Shah, Advocate for the respondents No.3 & 4.

BY THE COURT

This writ petition has been filed by petitioner-Akhtar Ali Sayyed, who has prayed for a writ of mandamus by directing

the respondents to issue a final seniority list thereby placing his name at serial No.21 below Shri Juhara Ram in the cadre of L.D.Cs. and consider his case for promotion to the post of U.D.C. prior to consideration of his junior in the cadre of L.D.Cs. and along with aforesaid Shri Juhara Ram and further prayed that during the pendency of the writ petition if any provisional list detrimental to his interest is issued, then the same may also be quashed and also prayed for quashment of the order dated 31st July, 2002 promoting thereby respondents No.3 and 4 to the post of U.D.C. ignoring the claim of the petitioner.

The petitioner was initially appointed on the post of L.D.C. in the office of District & Sessions Judge, Balotra vide order dated 07th April, 1984. He was later confirmed on the said post vide order dated 14th September, 1986. Being a permanent resident of Jalore, he submitted an application to the official respondents on 07th October, 1985 requesting for his transfer to Jalore Judgeship on the ground that being a elder son he had the responsibility to take care of his old aged parents. Pursuant to the request of the petitioner his application was

forwarded by District & Sessions Judge, Balotra to District & Sessions Judge, Jalore vide letter dated 08th November, 1985. Pursuant to the order dated 31st July, 1986 passed by the Registrar, Rajasthan High Court, the petitioner was transferred from Balotra to Jalore. The petitioner submitted his joining at Jalore on 07th August, 1986. The District Judge made an endorsement on his joining report on the same day that no post of L.D.C. was vacant at Jalore, therefore, he could not be allowed to join at Jalore and accordingly he was sent back to Balotra. The Registrar, Rajasthan High Court by his order dated 17th September, 1986 cancelled the order of transfer dated 31st July, 1986. The petitioner again submitted an application for his transfer from Balotra to Jalore which was again forwarded by District & Sessions Judge, Balotra vide letter dated 20th February, 1987. The Registrar, Rajasthan High Court, Jodhpur thereupon by his letter dated 29th April, 1987 requested the District & Sessions Judge, Balotra to seek consent of the petitioner as to if he was prepared to be placed at bottom of the seniority list of L.D.C. at Jalore (below all permanent and temporary). The petitioner by his application dated 19th May,

1987 gave his consent in writing as required. He thereafter again submitted an application on 16th February, 1988 for his transfer from Balotra to Jalore. On being asked to concur for the transfer of the petitioner, the District Judge, Jalore by his letter dated 04th May, 1989 addressed to the Registrar, Rajasthan High Court, Jodhpur informed that the request of the petitioner for transfer to Jalore could be accepted only if the petitioner agreed to work on the post of temporary L.D.C. till a permanent post become available and would be placed in seniority below all permanent L.D.C. The Registrar, Rajasthan High Court, Jodhpur however, did not agree to this and by his letter dated 27th May, 1989 required District & Sessions Judge, Balotra to again ask the petitioner as to whether he was prepared to be placed lowest in the seniority list of L.D.Cs. even below temporary hands if he was transferred to Jalore Judgeship. The petitioner by his letter dated 03rd June, 1989 informed that he was prepared to accept the transfer only if his name is placed below confirmed L.D.Cs., thus, implying that he may be placed at least above temporary L.D.Cs. The request of the petitioner however was not accepted and his application

was rejected by the Registrar, Rajasthan High Court, Jodhpur vide his letter dated 17th October, 1989. Not being prepared to accept the defeat, the petitioner again moved an application on 25th September, 1990 for his transfer from Balotra to Jalore but this time with the request that he was prepared to be transferred to Jalore Judgeship even if he has placed junior most L.D.C. as per Rules and would not claim T.A. and D.A. The District & Sessions Judge, Balotra by his letter dated 25th October, 1990 again forwarded his request. The Registrar, Rajasthan High Court, Jodhpur again required him to ask for the consent of the petitioner whether he was ready to be placed junior most in the cadre of temporary L.D.Cs. Since the petitioner wanted his transfer to Jalore Judgeship owning to his family circumstance, he accepted that condition by his application dated 10th March, 1991 and gave in writing that he was prepared to be treated junior most amongst L.D.Cs. even below temporary hands.

It was after so much exchange of communications on persistent request of the petitioner that finally the Registrar, Rajasthan High Court, Jodhpur by order dated 21st September,

1991 transferred the petitioner from Balotra to Jalore Judgeship on his own request. This order of transfer was conditional and the conditions incorporated therein are as follows:-

(i) That he will not get any T.A., D.A. And joining time but avail Gazetted Holiday(s) including Sunday if falling between the period immediately after relinquisition charge of the new post.

(ii) That he will be placed junior most amongst the temporary L.D.Cs. of Jalore Judgeship on his joining.

(iii) That his seniority will be counted from the date of joining in Jalore Judgeship.

That a provisional seniority list of the employees who were in Jalore Judgeship including those working on the post of LDC was issued on 03rd September, 1997 in which the name of the petitioner appeared at serial No.32. Since the petitioner was described as temporary in the said list, he objected thereto by representation dated 12th September, 1997 stating therein that his appointment was made after due selection process and he had even been confirmed. He relied on a Circular issued by the Registrar, Rajasthan High Court, Jodhpur on 21st January, 1976

wherein it was stated that if a confirmed employee is transferred from one judgeship to another he will be placed junior most in the seniority of confirmed employees. It has been asserted by the petitioner that his representation was considered by two members committee of Judicial officer constituted by the District Judge, Jalore which opined that in view of the provisions of Rule 26 and 27 of the Rajasthan Subordinate Courts Ministerial Establishment Rules, 1986 read with Circular dated 21st January, 1976 (supra), being a confirmed employee the petitioner should be placed at serial No.21 immediately below Juhara Ram. Although the petitioner was not supplied report of the said committee, he has however reproduced extract from the said report. When the petitioner came across a letter dated 18th January, 2002 addressed by District and Sessions Judge, Jalore and to all the judicial officers in his Judgeship to sent for the record of various L.D.Cs. and U.D.Cs. for considering their names for promotion, the petitioner submitted a representation to District & Sessions Judge 25th February, 2002 reiterating his prayer that he may be placed at serial No.21 in the provisional seniority list. The

official respondents however did not accept his prayer. The promotion order was passed on 31st June, 2002 whereby Shri Babu Singh and Chela Ram respectively respondents No.3 and 4, were promoted to the post of U.D.C. According to the petitioner, they were junior to him and therefore his claim for promotion has been unduly ignored. It is against the backdrop of these facts that the present writ petition has been filed by the petitioner seeking the relief enumerated above.

The writ petition has been contested by the official respondents as also private respondents, both of whom filed their respective reply to the writ petition. For the purposes of decision of the present writ petition, facts averred in the reply of official respondents are being refused to. Their stand is that as and when the petitioner asked for transfer from Balotra to Jalore Judgeship, the respondents always insisted for his consent that he was prepared to be placed below all permanent and temporary L.D.Cs. The petitioner accepted that condition more than once and finally it was on the basis of the consent given by the petitioner that the order of his transfer was passed on 21st September, 1991. The respondents have averred that

petitioner cannot be permitted to challenge that condition after 11 years now. He is debarred from questioning correctness of the said order having agreed for his transfer on conditions which he accepted with open eyes. The petitioner is now debarred from challenging the same and cannot be permitted to do so. The respondents have asserted that the petitioner has misinterpreted the Rules relating to seniority inasmuch it was a solitary case where an employee from one Judgeship to another was transferred on his own request and therefore the Rules have to be read in the light of the facts. The respondents have further stated that the reference to the report of the Committee was wholly misconceived inasmuch as it was an internal committee recommendation of which was never accepted and acted upon. It has therefore been prayed that the writ petition be dismissed.

I have heard Mr.Rakesh Arora, learned counsel for the petitioner and Mr.V.K. Mathur, learned counsel for the respondents and Shri Sandeep Shah, learned counsel for the respondents No.3 & 4 and perused the record.

Mr. Rakesh Arora, learned counsel for the petitioner

during the course of the arguments referred to provisions of Rule 26 of the Rules of 1999 which inter alia provides that seniority in service shall be determined from the date of substantive appointment on the post. It has been argued that even the earlier Rule of the subject namely 26 of the Rules of 1986 also provided that seniority in service for the purposes of promotion shall ordinarily be determined from the date of order of confirmation in the cadre. Reference has been made to proviso II to Rule 26 which inter alia provides that seniority for the purpose of promotion of a member of staff transferred from one Judgeship to another Judgeship or from a High Court under Rule 6 shall be determined on the basis of length of service and in doing so the previously determined inter-se seniority of the employees shall not be disturbed. Reference has also been made to the explanation below proviso II to Rule 26, according to which length of service would mean length of substantive service. Learned counsel for the petitioner argued that it was on the basis of this position of law and correct interpretation of the Rules that even the committee appointed by the District & Sessions Judge, Jalore acknowledged the correct position of law

by suggesting placement of the petitioner immediately below the junior most confirmed L.D.C. of Jalore Judgeship at serial No.21. It has been argued that the petitioner being a confirmed employee was wrongly treated as temporary in the seniority list issued by the respondents and he should be placed immediately below the confirmed employees because seniority cannot be determined contrary to Rule 26 (supra).

On the other hand, Mr. V.K. Mathur learned counsel for the respondents argued that it was on repeated request of the petitioner the official respondents accepted his prayer for transferring him to Jalore Judgeship. He was transferred on the condition of being placed lower in seniority than even the temporary L.D.Cs.

The petitioner accepted the conditional order of his transfer and joined in Jalore Judgeship with the clear understanding that he shall be placed lower in seniority then even the temporary hands. Having secured the order of transfer at the place of his native residence, the petitioner cannot now seek to challenge the very same condition of such transfer. It was argued that petitioner would be estopped from

challenging the correctness of the order of transfer and for the same reason therefore he also cannot claim his placement in seniority list immediately below confirmed L.D.Cs. in Jalore Judgeship.

Mr.Sandeep Shah, learned counsel for the respondents No.3 and 4 argued that his clients have been promoted on the basis of their seniority because they were originally born in Jalore Judgeship and therefore the petitioner who has been subsequently brought on transfer cannot claim seniority over them. The petitioner also cannot have any grievance against the order of their promotion who has been made as per the entitlement of respondents No.3 and 4.

I have considered the rival arguments advanced by the learned counsel for the parties and perused the records.

Analysis of the aforementioned facts would reveal that the petitioner firstly gave in writing such a consent in his application dated 07th October, 1985 (Annexure-3) and on which his earlier order of transfer was passed on 31st July, 1986. He was then not permitted to join Judgeship because of non-availability of post. He thus continued to serve in Balotra

Judgeship. When the petitioner persisted in requesting for transfer to Jalore Judgeship, he in some of applications submitted on 16th February, 1987, 19th May, 1987, 16th February, 1988 and 03rd June, 1989 gave in writing that he was prepared for the transfer if his name was placed in the seniority below confirmed L.D.Cs. He thereafter submitted an application on 25th September, 1990 that he was prepared for transfer to Jalore Judgeship if his name was placed in the seniority list of L.D.Cs. in accordance with the Rules. When this did not work, the petitioner again had a change of mind and submitted a request on 10th September, 1991 that if he was transferred to Jalore Judgeship, he was prepared to be placed junior most in the seniority of L.D.Cs., even below the temporary hands. This was because the Registrar, Rajasthan High Court, Jodhpur did not approve any kind of chance in the terms earlier agreed to by the petitioner. It was on the basis of this that the conditional transfer order of the petitioner was passed by the Registrar, Rajasthan High Court, Jodhpur on 21st September, 1990.

According to the Rules of 1986, especially Rule 26, the seniority of L.D.Cs. is maintained by taking Judgeship as one

unit. In the normal course, employees working in a particular Judgeship are required to be placed in the seniority according to date of their substantive appointment and if such date in the case of more than one person happens to be the same then according to their respective position on the lower post. Proviso II to Rule 26 although provides that seniority for the purpose of promotion of member of staff transfer from one Judgeship to another shall be determined on the basis of length of service of the person transferred in the cadre with which promotion is under consideration. It is however subject to a rider that in doing so, previously determined inter-se seniority of employee belonging to same conventing state shall not be disturbed. The seniority of the petitioner would be however regulated by peculiarity of his own case. The Registrar of the Rajasthan High Court always insisted on consent of the petitioner that he would be transferred only if he was prepared to be placed at the bottom of the seniority of Judgeship even below temporary L.D.Cs. It is a common knowledge that transfer from outside into a particular cadre creates imbalance inasmuch as not only the seniority of those who were originally born on the cadre is

disturbed but this delays the chances of their promotion. While accepting the request of the petitioner if the authorities subjected his order of transfer to the condition of the petitioner being placed junior most in the cadre, such an order can by no stretch of imagination be described contrary to the provisions of Rules. The petitioner having secured the order of such promotion on his repeated request and by acceding to the specific condition of his being placed in the seniority even below the temporary L.D.Cs., is now estopped from challenging the same by principal of equitable estoppal. Having secured the order of transfer on his own request and having acted upon such order, the petitioner cannot now be permitted to take a contrary stand. Such an action on his part would be hit by the theory of approbate and reprobate. The challenge made to the placement of the private respondents in the seniority above him and their promotion is misconceived being based on unfounded assumption on the petitioner about his seniority. The petitioner cannot derive any help from part of a two member committee of judicial officers appointed by District Judge. In working of a department, submission of report by such a committee is only

internal to its functioning and recommendation of committee by itself cannot be treated as an order passed by such department. When the recommendation of the committee was neither accepted nor was acted upon, that cannot afford any ground to the petitioner to assail the action of the respondents especially the terms of his order of transfer, his placement in seniority being only consequential thereto.

In the result, I do not find any merit in the present writ petition and the same is dismissed with no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K. Chouhan/-